Sup. Court, U.S.
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No.

In The

Supreme Court of the United States

NATHAN MOORE,

Petitioner,

v.

THE HOME DEPOT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

ISIDRO M. GARCIA
Counsel of Record
GARCIA, ELKINS & BOEHRINGER, P.A.
224 Datura St., Ste. 900
West Palm Beach, FL 33401
(561) 832-8033
Florida Bar No. 437883

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

36 pp

QUESTIONS PRESENTED

1. Whether the Court of Appeals' holding that an evidentiary hearing is not required to determine if a settlement agreement under Title VII was knowingly and voluntarily executed violates the precedent of this Court?

2. Whether the Court of Appeals' affirmance of the District Court's reliance upon State decisional law to determine the enforceability of a settlement agreement for claims based on federal law under Title VII violates the precedent of this Court?

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1, the parties in the proceedings below were Nathan Moore and The Home Depot.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Nathan Moore respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is unreported and is reprinted in the Appendix to this Petition ("App.") at 1-3. The order of the district court is unreported and is reprinted at App. 4-9.

JURISDICTION

The court of appeals entered judgment on October 4, 2002. App. 1-3. Justice Kennedy extended the time for filing the petition for a writ of certiorari to and including February 1, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

FEDERAL PROVISIONS INVOLVED

Title VII of the Civil Rights Acts of 1964 and 1991, as amended.

STATEMENT OF THE CASE

This case involves a claim for employment discrimination. On October 1, 2001, Petitioner and Respondent

attended a mediation conference. App. 4. On October 2, 2001 and October 3, 2001, Petitioner filed with the District Court copies of letters he wrote to his attorney in which Petitioner stated that he did not consent to the terms and conditions of the settlement terms discussed at mediation, that he didn't understand the terms and lacked the ability to make a rational decision about any settlement. App. 5. Those letters are part of the record. App. 12-14. After the mediation, Respondent proposed a Settlement Agreement, entitled "Settlement Agreement and Full and Final General Release," which Petitioner refused to sign. App. 5.

On October 4, 2001, Respondent filed a motion to enforce the agreement purportedly reached during the mediation conference. App. 5. Petitioner opposed Respondent's motion to enforce the agreement. App. 4-5. Further, Petitioner advised the District Court that he was coerced by his then-attorney, Jacob Rose, to settle his case during the mediation conference. App. 12-14. Petitioner requested permission, and was prepared, to present evidence to support his opposition to Respondent's motion to enforce, but the District Court refused to take any evidence. App. 10.

On October 4, 2001, the District Court dismissed Petitioner's Title VII claims without conducting an evidentiary hearing. App. 4. On January 31, 2002, the District Court granted Respondent's motion to enforce the settlement, again without conducting an evidentiary hearing. App. 10. On October 4, 2002, the Eleventh Circuit Court of Appeals affirmed. App. 1-3.

REASONS FOR GRANTING THE PETITION

Given the long standing rule of this Court, holding that there is no valid waiver of rights under Title VII unless the claimant "knowingly and voluntarily" does so, may a District Court summarily, and without taking any evidence, enforce a document that effects such a waiver, even when the party against whom the waiver is asserted claims he was coerced and misled into executing the document? Moreover, may a District Court rely upon State law (rather than federal law) in determining whether the claimed waiver should be enforced?

First, a determination of whether there has been a waiver of Title VII rights requires more than a cursory review of a document; it requires the District Court to consider evidence, and then determine whether the waiver was "knowingly and voluntarily" made by the plaintiff. Without taking and hearing such evidence, this factual determination cannot be made.

Second, it is well established by this Court that federal law applies when a District Court determines whether or not there is a valid "waiver" of a federal claim. The Eleventh Circuit has split on this issue, and some of its decisions conflict with the holdings of other circuits.

I. PETITIONER WAS ENTITLED TO AN EVIDENTIARY HEARING

The starting point for a waiver of Title VII rights is the case of *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974), where this Court held that to effectuate a valid release in favor of an employer from claims under Title VII, the employee must "knowingly and voluntarily" execute same, and have a full understanding of the terms

of the agreement. Moreover, such an alleged "waiver" of remedial rights must be closely scrutinized. In this case there was no scrutiny whatsoever given to the claimed release by the District Court: no evidence was received at the evidentiary hearing; nor did the District Court make any inquiry of Petitioner about the circumstances under which he executed the mediation document; nor did the District Court inquire of the reasons Petitioner wrote to the Court to repudiate the mediation agreement the day following the mediation.

In *Alexander*, this Court faced the issue of whether an arbitration agreement, and the rights conferred thereby, could effect a waiver of Title VII claims, which the District Court and the Tenth Circuit had held was the case given the election of remedies doctrine. Recognizing that this doctrine applied only to electing from among inconsistent remedies, this Court reversed and squarely held that the provisions of a collective bargaining agreement could be relied upon by an aggrieved employee independently of remedies that Congress entrusted for enforcement to the federal Courts under Title VII. Moreover, pursuit of a contractually bargained for remedy (arbitration) did not constitute a waiver of the Congressionally legislated remedy (Title VII). 415 U.S. at 49-50.

This Court also discussed the circumstances under which a waiver of Title VII rights could be effected. "In determining the effectiveness of such waiver, a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing." 415 U.S. at 52 n.15. How such a determination would be made was not expressly addressed by the Court; however, making such a factual determination would be no different from how District Courts decide disputed issues of fact,

through a trial where evidence is taken, or through, preliminarily, a motion for summary judgment, to determine if there are disputed issues of material fact that necessitate a trial. Here, the District Court set an evidentiary hearing, but received no evidence, making factual findings based solely on Petitioner's execution of the mediation agreement. That is insufficient to determine whether the agreement was entered into on a "voluntary and knowing" basis.

Curiously, the *Alexander* case is scrupulously followed by a line of Eleventh Circuit cases as the binding precedent of this Court. The problem is that there is a divergent line of authority from the Eleventh Circuit, which has its roots in State law, that allows District Courts to summarily enforce Title VII settlement agreements without an evidentiary hearing. This divergent line of cases renders this Court's precedent in *Alexander* vulnerable to being ignored, as it was in this case. This divergent line of authority is contrary to *Alexander* and its progeny and for that reason the judgment of the Court of Appeals must be reversed.

As discussed *supra*, *Alexander* is followed by a significant line of cases. In *Puentes v. UPS*, 86 F.3d 196 (11th Cir. 1996), the Court of Appeals identified four (4) factors that a Court must consider when determining whether or not a release was knowingly and voluntarily executed in the context of a federal employment discrimination case: 1. Plaintiff's education and business experience; 2. The amount of time the plaintiff had to consider the agreement before signing it; 3. The plaintiff's opportunity to consult with an attorney, coupled with the employer's encouragement or discouragement of attorney consultation; and 4. The consideration given in exchange for a waiver comparing

same to benefits already available to employee. *Id.* at 198. It is implicitly obvious that consideration to these factors cannot be properly given without evidence being taken, either at an evidentiary hearing, at trial, or at a minimum, by way of summary judgment.

The most critical factor in *Puentes*, and the issue that turned the tide in reversing a summary judgment for an employer at the District Court level, was the amount of time afforded to the plaintiffs, which amounted to 24 hours. In this case, the evidence from the record is uncontroverted that Petitioner was not given an opportunity to contemplate the proposed mediation agreement, since he executed same in the context of a purportedly heated and contentious mediation session. The evidence is also uncontested that Petitioner repudiated the mediation agreement on October 2, 2001, one day after its execution. Petitioner wrote to his then attorney, with a copy to the District Court, "It is my feeling that ***I hardly had a choice in the decision that I continuously and openly expressed disagreement*** of, yet you continued to negotiate [. . .] ***my true position in the matter was ignored.***" App. 12, emphasis added. At a minimum, this letter raises an issue of fact as to the voluntariness of Petitioner's action in executing the mediation agreement upon which the claimed waiver rests. Ironically, in *Puentes*, the employees agreed, to an express and unambiguous Release and Settlement Agreement, which was tendered outside the context of a confidential mediation. The plaintiffs executed the agreements, and, unlike this case, received compensation which the Court of Appeals characterized as "substantial settlement packages," and thereafter filed suit for discrimination. *Id.* at 197. The trial court granted a summary judgment based on the "release" of the claims.

Id. at 197. That decision was reversed by the Court of Appeals, and the plaintiffs in *Puentes* were permitted to proceed to trial on the merits of their claims, and the employer on the defense issue of whether they had released their claims. In other words, factual conflicts were to be resolved by a jury, not by a myopic and cursory review of a document.

As the Court of Appeals stated in *Puentes*: "If in fact the plaintiffs were only given twenty-four hours to decide whether to sign the releases, ***that was insufficient time***." *Id.* at 199, emphasis added. Here, Petitioner was not given ***any*** time to contemplate the proposed mediation agreement, and according to his letter to the District Court, was coerced by his former counsel into executing a document he did not wish to execute. In this case, there are disputed issues of fact that precluded enforcement of the "mediation agreement," since Petitioner, while still represented by his former counsel, wrote a letter to the District Court stating, in his own words, that he had not voluntarily executed the agreement and that his counsel had disregarded his wishes to go forward with the case.

The Eleventh Circuit has reaffirmed its holding in *Puentes* in the case of *Bledsoe v. Palm Beach County Soil and Water Conservation District*, 133 F.3d 816 (11th Cir. 1998), *reh'g en banc denied*, 140 F.3d 1044, *cert. denied*, 525 U.S. 826. In *Bledsoe*, a comprehensive release under the Florida Worker's Compensation laws was utilized by an employer to defeat a plaintiff's claim under the Americans With Disabilities Act (ADA). The Court of Appeals, citing to *Puentes*, rejected the District Court's disposition enforcing the claimed "settlement," because it found that there were disputed issues of fact as to whether the parties intended to settle anything more than a worker's

compensation claim. It is important to note here again that both the *Puentes* and *Bledsoe* cases were decided based on ***evidentiary submissions*** presented by way of summary judgment motions where, here, the District Court set an evidentiary hearing, then abruptly failed to receive any evidence.[1] Disputed issues of fact that appear in the face of this Record exacerbated the need for an evidentiary hearing, including: Petitioner's correspondence filed with the District Court; his refusal to execute the actual release Home Depot presented *after* the parties' mediation; and his assertions that he was pressured and coerced to settle a case he did not wish to settle on the terms presented.

Not only did the District Court (and the Court of Appeals) decline to follow the binding precedent of *Alexander* and its progeny as expressed in *Puentes* and *Bledsoe*, the error was compounded by the District Court's failure to take evidence on the factual issues necessary to make a determination on whether the agreement was entered into without coercion, as Petitioner claimed.

The District Court abused its discretion in not permitting this evidence. The case law is clear: where a party is seeking to be relieved of a claimed settlement agreement,

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[1] The case of *Wichman v. County of Volusia*, 110 F. Supp. 1354 (M.D. Fla. 1999), illustrates a proper application of *Alexander* and its progeny, including *Puentes* and *Bledsoe*. There, the District Court rejected a motion for summary judgment based on an alleged "Mediation Settlement Agreement," that contemplated future execution by the plaintiff of a subsequent agreement that was never executed, as is the case here. The District Court declined to hold, as a matter of undisputed fact, that the agreement which was executed, barred plaintiff's claim, leaving the issue to a jury determination. *Id.* at 1362.

the Court "must" conduct an evidentiary hearing. *Murchison v. Grand Cypress Hotel Corporation*, 13 F.3d 1483, 1486 (11th Cir. 1994). In *Murchison*, the settlement agreement was enforced *without* an evidentiary hearing, because the settlement agreement was read in open court, *with the plaintiff present, who did not object*, and because the agreement was specifically reviewed and approved by the District Court. In this case, the agreement was never reviewed nor approved by the District Court, nor was there a hearing to consider same; accordingly, an evidentiary hearing was warranted and necessary.

The Court of Appeals' decision in this case purported to distinguish *Murchinson*, while ignoring *Alexander* and its progeny, by stating that it was not an abuse of discretion for the District Court to decline to hold an evidentiary hearing since there was no "material factual dispute as to the existence or terms of the agreement or to the authority of the attorney to enter into settlement." Because "those disputes" were not present in this case, the Court of Appeals held, the District Court did not err in declining to take any evidence. App. 1-2. The obvious problem with this approach is that it ignores the most critical factors in considering a waiver of Title VII claims, that is, whether such a waiver was "voluntary and knowing." Under the holding of the Court of Appeals in this case, there is no room for an individual victimized by coercion to bring the issue to the District Court's attention. The result of such a rule is to completely undermine and disregard the holding of this Court in *Alexander*, and to permit a District Court to ignore complaints of coercion by narrowing the focus of the inquiry to factors other than those identified by *Alexander*, to wit, did the plaintiff sign the alleged release?

The District Court, in an attempt to justify its failure to allow for an evidentiary hearing and not follow the binding precedent of this Court, made a finding of fact that Petitioner's letters to the Court repudiate the mediation agreement "belies [Petitioner's] claimed ignorance." App. 7. Petitioner has never claimed to be "ignorant," nor is his "ignorance," or lack thereof, a relevant consideration under *Alexander* and its progeny to determine the enforceability of the agreement. Rather, Petitioner's letter of October 2, 2001 establishes that Petitioner " . . . continuously and openly expressed disagreement . . . " (during the mediation) and that he " . . . did not, and still do (sic) not agree with the terms of the agreement." App. 12. This letter was delivered to Petitioner's attorney one (1) day after the mediation and copied to the District Court. Petitioner's second letter of October 3, 2001 to his attorney, also copied to the District Court, claims the following: "During the entire mediation process, you saw how upsetting (sic) I was . . . I could not believe ***you were so contrary, and non-supportive to my interests . . . and your insistence that I sign the agreement.***" App. 13, emphasis added.

Hence, it is difficult, if not impossible, to comprehend the District Court's illogical "finding" that Petitioner's signature alongside that of his attorney is "sufficient proof that he knowingly and voluntarily agreed to the terms" of the agreement. What the letters do demonstrate is that Petitioner did not have a meaningful opportunity to confer with his counsel since his counsel had placed himself in an adversarial position to his own client. Since Petitioner asserts he was coerced into executing a document he did not wish to execute, the simple fact that his signature

appears alongside that of his counsel does not establish that he executed the document voluntarily.

The document does not speak for itself: it only establishes that Petitioner's signature was procured, not *why, how, or under what circumstances* the signature was procured. There is no evidence in this record that Petitioner "knowingly and voluntarily" executed the claimed release. In fact, Petitioner's correspondence to the District Court establishes, or at a minimum makes the claim, that his former attorney failed to abide by his wishes to ***not*** settle the case; that his attorney was acting in a manner characterized by Petitioner as "contrary" and not supportive of his interests, all of which create issues of material fact that mandate an evidentiary hearing. At a minimum, Petitioner should be given the opportunity, at an evidentiary hearing, to contest the speculative and wholly unsupported findings the District Court drew from his signature and from his letters.

Several circuits have held that District Courts must conduct evidentiary hearings where putative settlements are challenged. In *Malave v. Carney Hospital*, 170 F.3d 217 (1st Cir. 1999) an employee filed discrimination claims against her former employer and refused to sign a settlement agreement which her attorney negotiated on her behalf. *Id.* at 219. The employer moved to enforce the purported settlement and the District Court granted the motion without holding an evidentiary hearing. *Id.* The First Circuit held that federal law applies to a motion to enforce and that a trial court "may not summarily enforce a purported settlement agreement if there is a genuinely disputed question of material fact regarding the existence or terms of that agreement. In such circumstances, the cases consistently hold that the court instead ***must take***

evidence to resolve the contested issues of fact. *Id.*, emphasis added. Further, the First Circuit held in *Malave* that allegations of conflict between the party resisting settlement and his or her attorney are "fundamental" and require an evidentiary hearing:

> Even though the document that [the attorney] filed declared that he had received authority from [his client] to effectuate a $15,000 settlement, it went on to state that [the client's] son, on [the client's] behalf, had called [the attorney] within a day or two to make sure that [the attorney] understood that he did not have authority to settle the case for that sum. This recitation ought to have alerted the district court that something had gone awry, and that the extent of [the attorneys'] authority was open to question. ***We cannot conceive of a more fundamental dispute concerning the existence vel non of a settlement agreement than occurs when a litigant and her lawyer wrangle over whether the former imbued the latter with the authority to settle.***

Id. at 221, emphasis added. *See also Kulka v. National Distillers Products Company*, 483 F.2d 619 (6th Cir. 1973); *Autera v. Robinson*, 419 F.2d 1197 (D.C. Cir. 1969); *Petty v. Timken Corp.*, 849 F.2d 130 (4th Cir. 1988). *But see Stewart v. M.D.F., Inc.*, 83 F.3d 247 (8th Cir. 1996) (no evidentiary hearing necessary for motions to enforce settlement agreements).

In *Callie v. Near*, 829 F.2d 888 (9th Cir. 1987), the Ninth Circuit also reversed a District Court for summarily enforcing a settlement agreement without holding an evidentiary hearing, concluding that "[w]here material facts concerning the existence ***or terms*** of an agreement to

settle are in dispute, the parties must be allowed an evidentiary hearing." *Id.* at 890. The challenges to the settlement agreement in *Callie* are similar to those Petitioner raised. In *Callie*, as in this case, the party resisting settlement argued that settlement was contingent upon execution of a stipulation and judgment, neither of which were executed. *Id.* at 890. Similarly, in this case, the mediation agreement was contingent upon the execution of the "Settlement Agreement and Full and Final General Release," which Petitioner never executed.

Since there are divergent lines of authority within the Eleventh Circuit, and since other circuits disagree with the holding in this case, this Court should resolve those differences.

II. FEDERAL LAW GOVERNS ENFORCEABILITY OF SETTLEMENTS IN TITLE VII CASES

The District Court also erred in applying State law to determine if the agreement could be enforced, since that is a matter to be decided under federal law pursuant to the holding of *Alexander.* The Eleventh Circuit ignored this issue, but specifically relied upon a case that applies State law to determine whether or not a settlement agreement may be enforced. There is no suggestion in the language of Title VII that federal courts are bound by State common law on substantive issues, nor is there any case from this Court that suggests so. While the Court of Appeals declined to review this issue, its own case, *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503, 1516-17 (11th Cir. 1985), holds that federal common law should be used to

determine the scope and validity of settlement agreements in Title VII cases.[2]

Other circuits have held that federal law applies where parties dispute the enforceability of settlement agreements in federal court. In *Malave v. Carney Hospital*, 170 F.3d 217 (1st Cir. 1999), the First Circuit held, in an employment discrimination case, that:

> A party to a settlement agreement may seek to enforce the agreement's terms when the other party reneges. If, at the time of the claimed breach, the court case already has been dismissed, the aggrieved party may bring an independent action for breach of contract. If, however, the settlement collapses before the original suit is dismissed, the party who seeks to keep the settlement intact may

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[2] There is authority from the Court of Appeals that runs counter to *Eatmon* and holds that Title VII settlement agreements should be evaluated under State law. This line of authority usually results in summary enforcement of claimed releases. *See, Hayes v. National Service Industries*, 196 F. 3d 1252 (11th Cir. 1999) (applying Georgia law to enforceability of Title VII settlement under "apparent authority" doctrine). However, since *Eatmon is contrary to Hayes*, the latter has dubious value as precedent since it is contrary to the "prior precedent rule." *See, Smith v. GTE Corporation*, 236 F.3d 1292 (11th Cir. 2001) ("Under the well-established prior panel precedent rule of this Circuit, the holding of the first panel to address an issue is the law of this Circuit, thereby binding all subsequent panels unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court."). The *Hayes* case did not overrule, nor could it overrule *Eatmon*, since *en banc* consideration would be required. Without explaining why State common law would govern a cause of action based on federal law, *Hayes* has nevertheless found a place in the jurisprudence of the Court of Appeals. *See, Resnick v. Uccello Immobilien GMHB*, 227 F. 3d 1347, 1349 (11th Cir. 2000) (citing *Hayes* for the proposition that State law governs enforcement of settlement agreements made pursuant to the ADA).

> file a motion for enforcement. In a federal court, such a motion – at least when the underlying cause of action is federal in nature – is determined in accordance with federal law.

Malave v. Carney Hospital, 170 F.3d at 220 (internal citations omitted).

The State law cases the District Court relied upon were far afield. The District Court relied principally on *Sav-A-Stop v. Jaydon, Inc.*, 124 B.R. 356 (M.D. Fla. 1991), a bankruptcy case that did not involve a federal employment discrimination claim. *Sav-A-Stop* was wholly inapplicable to the facts here in that the party seeking to enforce the agreement had performed fully, and said performance had been accepted by the party seeking to avoid payment. *Id.* at 359. In this case, payment of the sum contemplated by the mediation agreement was never tendered, nor accepted. Because performance had occurred in *Sav-A-Stop*, and had been accepted, the party opposing enforcement of the payment portion of the agreement, was estopped from voiding the deal. *Id.* at 360. Again, the holding was premised on principles derived from State law, because State law claims were at issue, and there was no need to apply any federal statute, as in this case.

The other even more marginal cases cited by the District Court, *Worthy v. McKesson Corp.*, 756 F.2d 1370 (8th Cir. 1985) and *Robbie v. City of Miami*, 469 So. 2d 1384 (Fla. 1985) are inapplicable because: (1) the holdings are contrary to *Alexander*; (2) they are from jurisdictions that were clearly not binding on the District Court; and (3) the *Robbie* case is not an employment case, where a waiver of federal rights was at stake.

Because the Eleventh Circuit has drifted from its prior adherence to federal common law governing issues of enforcement of settlement under Title VII, and that drift is at odds with other circuits, it would be of enormous assistance to litigants for this Court to reiterate that federal law governs claimed waivers of federal rights as *Alexander* implicitly suggests.

CONCLUSION

Petitioner respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

ISIDRO M. GARCIA
GARCIA, ELKINS &
BOEHRINGER, P.A.
224 Datura St., Ste. 900
West Palm Beach, FL 33401
(561) 832-8033
Florida Bar No. 437883

Counsel for Petitioner

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-11964
Non-Argument Calendar

D.C. Docket No. 00-08757-CV-WDF

NATHAN MOORE,

Plaintiff-Appellant,

versus

HOME DEPOT,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

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(Filed Oct. 4, 2002)

Before BLACK, CARNES, and MARCUS, Circuit Judges.

PER CURIAM:

Nathan Moore appeals the district court's order enforcing a settlement agreement between Moore and his former employer, Home Depot.

On August 18, 2000, Moore filed a complaint against Home Depot alleging racial and age discrimination. Moore and Home Depot then participated in two days of mediation,

during which Moore was represented by counsel, in an attempt to settle the claims. At the end of the second day, the parties entered into a confidential, handwritten settlement agreement. Moore, his attorney, and a Home Depot representative all signed the agreement, which provided for the later execution of a formal general release and settlement agreement that would incorporate all the terms contained in the handwritten agreement. Subsequently, contending that the settlement terms were unfavorable to him, Moore refused to sign the later formal agreement and repudiated the settlement. Without holding an evidentiary hearing, the district court granted Home Depot's motion to enforce the settlement, and Moore now appeals.

We review a district court's decision to enforce a settlement agreement without an evidentiary hearing only for an abuse of discretion. *Murchison v. Grand Cypress Hotel Corp.*, 13 F.3d 1483, 1485 (11th Cir. 1994). Moore first contends that the district court erred by failing to hold an evidentiary hearing before enforcing the settlement. To the contrary, "[a] number of courts have recognized the authority of a trial court to summarily enforce a settlement agreement without an evidentiary hearing." *Id.* at 1486. In *Murchison*, we stated that a district court must hold an evidentiary hearing before enforcing a settlement if there is a material factual dispute as to the existence or terms of the agreement or to the authority of the attorney to enter into the settlement. *Id.* Because those disputes were not present in that case, we affirmed the district court's decision to enter final judgment on the settlement agreement without an evidentiary hearing. *Id.* at 1487. Similarly, in this case, neither of those disputes is present,

so the district court did not err by declining to hold an evidentiary hearing.

Second, Moore contends that the settlement agreement was invalid as to his age discrimination claim because it failed to meet the requirements of the Older Workers Benefit Protection Act. Specifically, Moore contends that under 29 U.S.C. § 626, all agreements waiving rights under the act must provide for a seven-day period in which the claimant can revoke the settlement agreement. This contention fails, however, because the seven-day revocation period requirement is inapplicable to waivers "in settlement of a charge filed with the Equal Employment Opportunity Commission, *or an action filed in court by the individual. . . .* " 29 U.S.C. § 626(f)(2) (emphasis added). Here, Moore filed an action in court, so the seven-day revocation period does not apply.[1]

AFFIRMED.

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[1] Moore does not argue that any of the other restrictions contained in the Older Workers Benefit Protection Act are applicable in this case, and issues not raised on appeal are deemed waived. *Marek v. Singletary*, 62 F.3d 1295, 1298 n.2 (11th Cir. 1995) ("Issues not clearly raised in the briefs are considered abandoned.").

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NATHAN MOORE, Case No. 00-8757-CIV-FERGUSON

Plaintiff,

vs.

HOME DEPOT,

Defendant.

_____/

ORDER ON DEFENDANT'S MOTION TO ENFORCE SETTLEMENT

THIS CAUSE is before the Court upon the Defendant's Motion to Enforce the Settlement Agreement [D.E. 58].

FACTS

On October 1, 2001, Plaintiff Nathan Moore, and Defendant Home Depot, attended a mediation conference in an effort to resolve an employment discrimination conflict. Both parties, represented by counsel, signed a confidential, handwritten settlement agreement indicating the parties' mutual intent to resolve the dispute. The parties further agreed to later execute a formal general release and settlement agreement which would incorporate all the terms contained in the handwritten agreement. Believing that the case was settled, both the mediator, Steven A. Mayans, and Home Depot filed notices of settlement with this Court in early October. Relying upon both the Mediator's Report and Home Depot's Notice of Settlement, this Court dismissed the case on October 4,

2001 and "retain[ed] jurisdiction . . . to enforce the settlement."

After dismissing the case, the Court received copies of Moore's October 2, 2001 and October 3, 2001 letters to his attorney requesting that the mediation agreement be rescinded based on Moore's discontent with the agreed upon terms and the mediation process. Moore further asserted that he lacked the ability to understand the agreement so as to make a rational decision. After Moore refused to execute a more formal settlement agreement on October 4, 2001, Home Depot filed this motion to enforce the settlement agreement reached between the parties on October 1, 2001.

ISSUE

The issue now before the Court is whether an agreement made at mediation is lacking in effect where it (1) purports to settle a claim; (2) contains all the elements of a contract; (3) is signed by the Plaintiff and his counsel; and (4) contemplates the execution of a future more formal agreement.

DISCUSSION

Moore argues that the settlement agreement he signed on October 1, 2001, which contemplated the execution of a more formal agreement, is not enforceable because he never executed the final version entitled "Settlement Agreement and Full and Final General Release."

In *Save-A-Stop, Inc. v. Jaydon*, 124 B.R. 356, 359 (M.D. Fla. 1991), the court found that settlement agreements are construed under the law as contracts and the fact that an agreement may provide for a later more specific agreement does not affect the enforceability of the original agreement. The court further noted that such a contract is not lacking in effect merely because "it expresses the idea that something is left to a future agreement and such an agreement to agree is simply an agreement *in praesenti* to do it." *Id.* (citations omitted). Therefore, an agreement to agree is enforceable where it is sufficiently specific to be capable of implementation, and where all the essential elements are set forth. *Id.*

In this case, the parties' October 1, 2001 agreement executed at the mediation conference states "[t]he parties agree to execute a formal General Release and Settlement Agreement which incorporates all of the terms contained in this handwritten agreement". Pursuant to *Jaydon*, the parties' agreement to make the agreement more formal after its initial execution does not affect the enforceability of the original agreement. *Id.* Furthermore, "[s]ettlement agreements are highly favored by courts of law as public policy favors the efficiency and mutual benefit of compromise and thus will usually be enforced". *Id.* Because all the essential terms had been agreed to, the settlement between Moore and Home Depot is enforceable.

In his attempt to rescind the settlement agreement Moore also argues that although he executed the contract, there was no meeting of the minds because he neither had the capacity to read the agreement objectively, or the ability to make a rational decision.

Robbie v. City of Miami, 469 So. 2d 1384 (Fla. 1985), addressed the necessary intention of parties when forming a valid contract. Using an objective standard to determine whether a contract is enforceable, the court in *Robbie* stated "the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs – not on the parties having meant the same thing but on their having said the same thing." *Id.* at 1385 (citations omitted). Even if incapacity is an exception to the *Robbie* rule, there is not a scintilla of evidence that Moore lacked the ability to understand. In fact his written *pro se* protestations to the Court[1], before hiring new counsel, belies his claimed ignorance. Moore's signing of the simple agreement at the mediation conference, accompanied by his attorney's execution, is sufficient proof that he knowingly and voluntarily agreed to the terms. Given Moore's opportunity to consult with his attorney at the mediation conference had he experienced difficulty understanding the terms, his subsequent expression of dissatisfaction came too late.

Similarly in *Worthy v. McKesson Corp.*, 756 F.2d 1370, 1372 (8th Cir. 1985), an employee's assent to settle all claims of alleged employment discrimination was found to be knowing and voluntary, and thus barred his attempts to rescind the settlement agreement simply because he later thought it to be unsatisfactory. The employee in *Worthy*, like Moore, agreed to accept his employer's offer to settle all claims. The employer assumed the responsibility

[1] Copies of the two letters Moore sent to his former counsel, which he also submitted to the Court, are now part of the record along with a copy of the parties' October 1, 2001 settlement agreement.

of preparing formal documents and all trial preparation ceased. *Id.* A few days later, the employee requested that his attorney continue with trial preparations despite the settlement agreement. *Id.* The court found that the employee was trying to rescind an otherwise voluntary agreement because he felt the settlement was paltry. *Id.* at 1373. The court further noted that if a party to a suit who has previously authorized a settlement changes his mind . . . , that party remains bound by the terms of the agreement. *Id.*

Similar to the plaintiff in *Worthy*, Moore, with his attorney at his side, knowingly and voluntarily agreed to the terms of the agreement, and manifested his intention through his execution of the agreement, thus he is bound to the terms of the agreement. Therefore it is hereby

ORDERED AND ADJUDGED that the Defendant's Motion to Enforce the Settlement Agreement [D.E. 58] is **GRANTED in part, DENIED in part.** Accordingly, Plaintiff shall execute a general release in favor of the Defendant within twenty (20) days of the date of this Order. The Defendant's request for attorneys' fees and costs incurred in the filing of its Motion to Enforce the Settlement Agreement is denied.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Florida, this 31st day January, 2002.

/s/ Wilkie D. Ferguson, Jr.
WILKIE D. FERGUSON, JR.
UNITED STATES
DISTRICT JUDGE

copies provided:
Patricia Lowry, Esq.
Jacob Rose, Esq.(courtesy)
Isidro Garcia, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NATHAN MOORE,

Plaintiff,

CASE NO.: 00-8757-FERGUSON
Magistrate Judge Snow

v.

HOME DEPOT USA, INC.,

Defendant.

_____/

Denied

Wilkie D. Ferguson, Jr.

3/21/02

PLAINTIFF'S MOTION FOR REHEARING OR TO ENTER FINAL JUDGEMENT AND TO STAY FINAL JUDGMENT PENDING APPEAL AND INCORPORATED MEMORANDUM OF LAW

(Filed Mar. 21, 2002)

Plaintiff, NATHAN MOORE, through counsel, moves for rehearing of the Court's order enforcing the mediation agreement, or, if said motion is denied, for entry of a final judgment which can be appealed, and for stay of said final judgment until appellate remedies are exhausted, and would show in support:

1. By order rendered January 31, 2002, the Court granted Defendant's Motion to Enforce Settlement.

2. The Court declined to take any evidence of the circumstances relating to plaintiff's claim of coercion by his former counsel (Jacob Rose) at said mediation, or take testimony of the reasons Mr. Rose may have had to coerce his client into entering into such an agreement (claimed mental incapacity during at least a portion of the period in which this case was pending). Plaintiff was prepared to put this evidence on at the evidentiary hearing the Court

had scheduled, and Mr. Rose was present for said hearing and available to testify on the issue.

October 2, 2001

Nathan Moore
3959 Harwood St.
Lake Park, Florida 33403

Jacob A. Rose
Attorney at Law

RE: REQUEST TO RESCIND MEDIATION AGREEMENT
Case No. 00-8757-CIV-FERGUSON

Dear Mr. Rose, Esq.

After giving thought to the mediation agreement that we signed yesterday October 1, 2001, in the civil suit against Home Depot, as you are aware of, I did not, and still do not agree with the terms of the agreement. It is my feeling that I had hardly a choice in the decision that I continuously and openly expressed disagreement of, yet you continued to negotiate. Furthermore, I feel that my interest of continuing with the civil suit against Home Depot was not considered being that my true position in the matter was ignored.

Please accept this letter as a request to rescind the mediation agreement and to go forward with the civil suit already in progress.

Thank You,

/s/ Nathan Moore
Nathan Moore

Cc: Judge Wilke D. Ferguson
Case File

October 3, 2001

Nathan Moore
3959 Harwood St.
Lake Park, Florida 33403

Jacob A. Rose
Attorney at Law
Via: Fax, Hand Delivery

RE: SECOND REQUEST TO RESCIND MEDIATION AGREEMENT
Case No. 00-8757-CIV-FERGUSON

Dear Mr. Rose, Esq.

As I stated in my first request to rescind the mediation agreement that we signed on October 1, 2001 in the civil lawsuit against Home Depot, I disagree with the terms of this agreement. In fact, I am very upset with the manner in which this entire mediation process took place. This was one of the most traumatic encounters I have I [sic] ever experienced.

Firstly, I have been very honest and up front with you and I am relying on you to be the same with me. During the entire mediation process, you saw how upsetting [sic] I was, and how I outwardly expressed my discontentment. You know how strongly I feel about my experiences with Home Depot, thus this case. Secondly, I could not believe you were so contrary, and non-supportive to my interests surrounding the many issues of the case, and your insistence that I sign the agreement. To say the least, your actions were very discouraging for the cause of which I have sought your services.

Lastly, I read the agreement today for the first time and found the terms and conditions to be unbelievable. Once you looked over the handwritten document that the

opposing counsel drafted, none of these terms and conditions were discussed or explained to me. The only discussion was the dollar amount, which was being negotiated. Considering the state of mind I was in at that time, I strongly believe this should have occurred. Nevertheless, I do not believe that I was mentally capable of reading over the agreement objectionably or making a rational and intelligent decision.

Please accept this letter as a request to rescind the mediation agreement of October 1, 2001, based on my emotional and mental disposition.

Thank You,

/s/ Nathan Moore
Nathan Moore

Cc: Judge Wilke D. Ferguson, Jr.
Case File
See: VA Medical File